

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HEARTHSIDE FOOD SOLUTIONS, LLC
Employer

and

Case 08-RC-264349

BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION AFL-CIO, CLC
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

On November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which sets forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic.

In denying review, we note that the direction of a mail-ballot election was consistent with the concerns articulated in *Aspirus Keweenaw*.² Moreover, the election has been held and setting it aside would result in waste of resources and delay and would be a disservice to the employees who cast their ballots in good faith. Denying review is also warranted because the current Covid situation in the State of Ohio, where the Employer is located, would support a mail-ballot election under *Aspirus Keweenaw* if this election were set aside and a new determination were to be made now.³ Under these circumstances, we find no reason to overturn the Acting Regional Director's determination.

¹ We also deny the Employer's Emergency Motion to Stay Mail Ballot Election as moot.

² In this connection, we note that the Acting Regional Director found that there had been 27 confirmed cases of Covid among the employees at the Employer's facility, with two cases confirmed as recently as late August-early September. Moreover, the logistical challenges of holding a manual election in a unit of 1200 employees under the Covid protocols, cited by the Acting Regional Director, also militate in favor of a mail ballot here.

³ Current positivity rate data for Hancock County does not appear to be available from any official source. The positivity rate for the State of Ohio, however, was 15.87 percent for the week ending November 24, 2020. See <https://coronavirus.jhu.edu/region/us/ohio>. See *Aspirus Keweenaw*, supra, slip op. at 6 fn. 25.

Member McFerran agrees to deny review of the Acting Regional Director's Decision and Direction of Election for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that setting aside the election at this point would be inefficient and unfair to the

JOHN F. RING,

CHAIRMAN

WILLIAM J. EMANUEL,

MEMBER

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., December 1, 2020.

unit employees, and that, even under the majority opinion in *Aspirus*, the Acting Regional Director's decision should be affirmed for the reasons given above.